IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

Crl.Rev.Pet.No. 4095 of 2007()

CRA.795/2006 of VI ADDL.SESSIONS COURT, ERNAKULAM
CC.840/2004 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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REVN. PETITIONER:

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1. M/S.FATHIMA VENEERS
KANDANTHARA, ALLAPRA PO
(REP.BY ITS MANAGING PARTNER,
ABDUL KHADER M.M.)

2. ABDUL KHADER K.M., S/O.MOIDEEN
KAROTHUKUDY HOUSE,
M/S.FATHIMA VENEERS
KANDANTHARA, ALLAPRA PO

3. MOIDEEN, M/S.FATHIMA VENEERS
KAROTHUKUDY HOUSE, KANDANTHARA
ALLAPRA PO.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENTS:

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1. P.A.MAKKAR, S/O.AHAMED,
PLACHERY HOUSE,
AMBANADU, EDATHALA

2. STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.S.DILEEP

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 16.11.07 , THE COURT ON 16/11/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 4095 OF 2007

Dated this the 16th day of November, 2007

O R D E R

In this revision filed under Section 397 read with Section 401 Cr.P.C. the petitioners who were the accused in C.C. No.840/2004 on the file of the J.F.C.M., Perumbavoor challenge the conviction entered and the sentence passed against them for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the revision petitioners and the learned Public Prosecutor.

3. The learned counsel appearing for the revision petitioners re-iterated the contentions in support of the revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioners in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the revision petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioners while entering the above finding. The said finding has been recorded

on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the revision petitioners. I am, however, inclined to modify the sentence in the light of the recent pronouncement by the Supreme Court that no default sentence can be imposed for an order for compensation under Section 357(3) Cr.P.C. Accordingly, the sentence imposed by the courts below on the revision petitioners is set aside and instead each of them is sentenced to pay a fine of Rs.73,000/- (Rupees seventy three thousand only) within five months from today, failing which they shall suffer simple imprisonment for three months by way of default sentence. As and when the fine amount is deposited, the same shall be paid to the 1st respondent complainant by way of compensation under Section 357(1) Cr.P.C.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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